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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KARIN AXELSSON, MARCUS BERNHARDSON,  
CONNY FORSANDER, and  
FREDRIK PAULSSON

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Appeal 2009-008809  
Application 09/891,379  
Technology Center 2600

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Before, THOMAS S. HAHN, ELENI MANTIS MERCADER, and  
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

HAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants invoke our review under 35 U.S.C. § 134(a) from final rejections of claims 22-24 and 26-35.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

### *Introduction*

Appellants claim an apparatus and method for electronically displaying broadcast receiver electronic program guide information.<sup>2</sup> The below reproduced claim 22 is illustrative:

22. A method comprising:

receiving at least one electronic program guide corresponding to a broadcast system;

generating display of said at least one electronic program guide in a first display area of a display unit associated with an apparatus;

selecting a desired program from said at least one electronic program guide; controlling said apparatus to set to the selected program;

generating display during browsing of said electronic program guide of the selected program in the second display area of said display unit;

storing parameters identifying said selected program in a list of selected programs; and

generating display of said list of the selected programs stored in the storage means in a third display area of said display unit, wherein said third display area is separate from said first display area.

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<sup>1</sup> Claims 1-21 and 25 have been cancelled.

<sup>2</sup> See generally Spec. 8:1-9:10; Fig. 1.

*Rejections<sup>3</sup>*

The Examiner, under 35 U.S.C. § 103(a), rejected:

1. Claims 22-24, 26-28, and 33-35 as being unpatentable over the combination of Yuen (WO 97/34414) and Van Der Vleuten (US 6,460,183 B1) (Ans. 3-14); and
2. Claims 29-32 as being unpatentable over the combination of Yuen, Van Der Vleuten, and Ellis (US 5,986,650) (Ans. 14-21).

*Appellants' Contentions*

Appellants group and collectively contend that independent claims 22 and 33-35 are patentable (App. Br. 20-24; Reply Br. 4-7). Appellants assert that the obviousness references Yuen and Van Der Vleuten are deficient, alone or in combination because they fail to teach or suggest the recited limitations for selecting a desired program, storing selected program parameters, and displaying selected programs in a separate area (*id.*). We, pursuant to our authority under 37 C.F.R. § 41.37 (c)(1)(vii), select claim 22 from the argued group as being representative.

Appellants next group and collectively contend that claims 29-32 are patentable (App. Br. 24-26). We select independent claim 31 from this group as being representative pursuant to our authority under 37 C.F.R. § 41.37 (c)(1)(vii). Appellants assert that the further obviousness reference, i.e., Ellis, also is deficient, whether alone or in combination with the other cited references because a recited timer activated upon program selection is not taught or suggested.

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<sup>3</sup> Effective filing dates of cited prior art precede Appellants' earliest effective filing date and are not at issue.

*Issues on Appeal*

1. Did the Examiner err in rejecting representative claim 22 as being obvious because Yuen and Van Der Vleuten alone or in combination fail to teach or suggest disputed limitations?
2. Did the Examiner err in rejecting representative claim 31 as being obvious because Yuen, Van Der Vleuten, and Ellis alone or in combination fail to teach or suggest disputed limitations?

ANALYSIS

*Claim 22*

We reviewed the Examiner's obviousness rejection of representative claim 22 in light of Appellants' arguments for patentability identified *supra*, and we conclude that the Examiner did not err in the rejection.

Based on our review, we adopt as our own (1) the findings and reasons set forth by the Examiner for the rejection of claim 22 in the action mailed Dec. 28, 2007 from which this appeal is taken (Final Action 6-7) and (2) the corresponding reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 21-25). Emphasis as to our analysis is provided below where we highlight and address specific arguments and findings regarding the obviousness rejection of claim 22.

The Examiner finds that Yuen teaches the claim 22 identified limitations (Final Action 6-7), but acknowledges that Yuen "does not disclose storing parameters identifying the one or more selected programs to a list or the step of displaying the list of selected programs" (Final Action 7).

The Examiner finds these elements taught by Van Der Vleuten (Final Action 7) and reasons that an ordinarily skilled artisan would have the technical grasp and understanding to modify Yuen with Van Der Vleuten's taught elements so as to provide ready access to previously selected programs (*id.*).

Appellants argue, *inter alia*, that the Examiner's indicated combination of references is not obvious because Van Der Vleuten teaches away from claim 22's limitation for generating a display of a stored selected program list (App. Br. 21). Asserted as evidence by Appellants for the teaching away contention is Van Der Vleuten's disclosure of known television receivers having colored buttons for recalling previously selected teletext pages that are displayed on screens in corresponding colors (*id.*; see Van Der Vleuten col. 2, ll. 47-51). Appellants particularly rely on Van Der Vleuten's further disclosures that "[a] drawback of such a feature is that only a very limited number of signals can be accessed and that disturbing elements are required on the screen" (Van Der Vleuten col. 2, ll. 51-54). Appellants argue that "Van der Vleuton denounces . . . implementation [of the Examiner's indicated combination of references] because 'disturbing elements are required on the screen' . . . ." (App. Br. 23).

The Examiner responds that:

While it is reasonable to perceive the unsolicited display of two colored indications on [a] screen as a nuisance and therefore disturbing elements, appellant[s'] position that the display of an electronic program guide that has been *explicitly invoked by the user* (see Yuen: page 8, lines 7-9) are disturbing elements as well, appear to be unreasonable.

(Ans. 23.) The Examiner continues that "if the user explicitly invokes the EPG [electronic program guide], it is very likely that the user is interested in

obtaining some information from the EPG, and therefore the EPG is not likely constituting ‘disturbing elements’ as alleged by the appellant[s]” (*id.*).

Not persuaded, Appellants respond that:

[A] user invokes the “disturbing elements.” Therefore, contrary to the Examiner’s arguments, when Van der Vleuton teaches away from presenting “disturbing elements” on the screen, it does so in the context of such elements being invoked by a user. For at least this reason, Applicants disagree with the Examiner’s interpretation of Van der Vleuton and, therefore, respectfully request reversal of the Examiner’s rejections.

(Reply Br. 6.) Apparently, Appellants by acknowledging that a user of a known receiver can initiate an action that results in “disturbing elements” is contending that Van Der Vleuten is disparaging such known devices and methods, and, thereby, is teaching away. We disagree. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (A reference does not teach away by merely expressing some preference for an alternative embodiment.). We, instead, agree with the Examiner because providing information to a user is addressing a recognizable need, which Van Der Vleuten discloses as having previously been addressed, by using a known embodiment. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007) (“When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.”).

For the foregoing reasons, we sustain the rejection of representative claim 22 and also the rejection of independent claims 33-35 that fall for

similar reasons. Additionally, we sustain the rejection of dependent claims 23, 24, and 26-28 that are not separately argued.

*Claim 31*

We reviewed the Examiner's obviousness rejection of representative claim 31 in light of Appellants' arguments for patentability identified *supra*, and we conclude that the Examiner did not err in the rejection.

Based on our review, we adopt as our own (1) the findings and reasons set forth by the Examiner for the rejection of claim 31 in the action mailed Dec. 28, 2007 from which this appeal is taken (Final Action 11-14 and 17; *see also* Ans. 17-20) and (2) the corresponding reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 25-26). Emphasis as to our analysis is provided below where we highlight and address specific arguments and findings regarding the obviousness rejection of claim 31.

The Examiner finds that Yuen and Van Der Vleuten teach claim 31 identified limitations (Ans. 17-19), but acknowledges finding

Ellis discloses a method of activating a scanning operation allowing [a] user to see a sample of programming that is currently airing on a plurality of channels. Ellis further discloses that such a scan operation maybe performed on [a] smaller subset of listings such as "favorite channels", wherein user maybe able to scan through samples of programming on channels of particular interest to them. See column 8 lines 23-27 and column 17 lines 34-38. Additionally, Ellis discloses that a user initiates the scan operation to browse through programming on the "favorites" from a "start channel" (see column 10 lines 39-40), upon which, a sample of programming on a channel on the favorites list is shown for a predetermined time (see column 11 lines 1-7). As such when the user initiates the "scan" operation, the system makes a program selection of a channel in the favorite list, activates a timer



upon the program selection (as the program is displayed for only a predetermined time), controls the apparatus to [be] tuned to the selected program for a predetermined time, and generates the display of the selected program in the second display area of the display unit for the predetermined time.

(Ans. 19.)

Appellants dispute the Examiner's findings and conclusion, contending that "Ellis merely describes a timer for use during a scanning function and not a timer for a program selection function i.e., 'activated upon program selection'" (App. Br. 24). Responding, the Examiner indicates, considering a "scenario in the modified system where the history list may contain as few as two programming channels, i.e., [the channel user is currently tuned to (e.g.,] channel 13) and another channel user had previously tuned to (e.g.,] channel 11)" (Ans. 25), and the Examiner continues that:

In such a scenario, when a user initiates a scan from the current channel, the current channel (in this instance, channel 13) becomes the start channel. Upon activation of the scan, the system then tunes to the next channel (in this instance, channel 11) on user's history list (see Ellis: column 10 lines 32-36), thereby performing an automatic program selection by setting tuner to display programming on the next channel in the history list (viz. channel 11). The system tunes to channel 11 for a predetermined time and returns to the start channel (in this case, channel 13) again (see Ellis: column 11, lines 1-7). The above modified system therefore comprises a scenario for controlling the apparatus to set to the previously selected program (i.e., [the "start channel"]) upon elapse of the predetermined time; and generating the display of the previously selected programs in the second display area of the display unit upon elapse of the predetermined time.

(Ans. 25-26.) Appellants do not respond to these Examiner indicated findings and reasoning. We agree with these findings and also agree with

the provided articulated reasoning that possesses rational underpinnings premised from evidentiary supported factual bases, which all support the legal conclusion of obviousness.

For the foregoing reasons, we sustain the rejection of representative claim 31 and also the rejection of claims 29, 30, and 32 that fall for similar reasons.

### CONCLUSIONS

1. The Examiner did not err in rejecting representative claim 22 as being obvious because Yuen and Van Der Vleuten alone or in combination fail to teach or suggest disputed limitations.
2. The Examiner did not err in rejecting representative claim 31 as being obvious because Yuen, Van Der Vleuten, and Ellis alone or in combination fail to teach or suggest disputed limitations.
3. This record shows that claims 22-24 and 26-35 are unpatentable.

### ORDER

The Examiner's decision rejecting claims 22-24 and 26-35 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2010).

AFFIRMED

gvw